

☐ No Hearing Set  
☒ Hearing is Set

Date: Friday, April 5, 2019

Time: 9:00 a.m.

Judge James J. Dixon

STATE OF WASHINGTON  
THURSTON COUNTY SUPERIOR COURT

STATE OF WASHINGTON,

Plaintiff,

v.

TIM EYMAN, *et al.*,

Defendants.

NO. 17-2-01546-34

PLAINTIFF STATE OF  
WASHINGTON'S OPPOSITION TO  
DEFENDANT'S MOTION FOR  
PARTIAL SUMMARY JUDGMENT

I. INTRODUCTION

Defendant Tim Eyman has spent decades lying to campaign donors and the public about his misuse of campaign funds, and now he is lying to this Court about what the State seeks here and the legal standards that apply. The Court should see through his lies and deny his motion.

Eyman falsely claims that the State is asking this Court to enjoin him from "*any* meaningful participation in initiative campaigns." Eyman Br. at 6. In reality, the State asks only that he be barred from management of "*financial transactions* of any kind for any political committee . . . ." First. Am. Compl. at 17 (¶¶ 6.1 - 6.4) (emphasis added). The State makes this limited request because Eyman has absolutely refused to comply with state campaign finance laws for decades and has continued to do so even after previously admitting such conduct in court and promising to stop it. The State's request is authorized by state law, consistent with the state and federal constitutions, and necessary to prevent further illegal conduct by Eyman.

In 2002, Eyman was caught lying to donors and syphoning campaign money into his own

1 | pockets. After the State filed suit, Eyman admitted he lied to the public and violated campaign  
2 | finance laws. The Snohomish County Superior Court entered a judgment against him, including  
3 | civil penalties and an injunction permanently banning Eyman “from acting as treasurer of any  
4 | political committee . . . or as signer on any financial accounts of any such committee.” See  
5 | Judgment Against Defendant Tim Eyman (*State v. Permanent Offense*, Snohomish County  
6 | Cause No. 02-2-08212-1).

7 |         At the time of his first offense, Defendant Eyman conceded that the Superior Court had  
8 | the authority to issue its injunction. Now, after 17 years of ignoring that injunction and the law,  
9 | hiding financial transactions from his partners and the public, laundering donations through out-  
10 | of-state charities, directing contributions intended for one ballot measure committee to another,  
11 | and pocketing at a minimum hundreds of thousands of dollars in campaign donations, Eyman  
12 | argues that this Court lacks the authority to enjoin him from controlling financial transactions  
13 | for the same types of organizations he has been bilking for decades.

14 |         Defendant Eyman’s argument fails for at least four reasons. First, the Fair Campaign  
15 | Practices Act (“FCPA”) grants this Court the authority to issue an injunction as described in the  
16 | complaint. Second, Defendant Eyman has no First Amendment right to control the finances of a  
17 | political committee. Third, even if he did have a First Amendment right, it can be limited by this  
18 | Court to prevent unlawful conduct. Finally, Defendant Eyman’s motion improperly requests an  
19 | advisory opinion on an injunction that has yet to be requested. The Court should deny his motion.

## 20 |                   **II.     EVIDENCE RELIED UPON**

21 |         The State relies upon the pleadings in this case as well as the declarations of Gary  
22 | Chandler, Greg Hanon, John Guadnola, and Tony Perkins, with attachments.

## 23 |                   **III.    STATUTORY HISTORY**

24 |         Enacted in 1972, Initiative 276 (I-276), which gave rise to the FCPA, codified as  
25 | RCW 42.17A, set a high bar for transparency and integrity in politics and government in  
26 | Washington. The public has a strong interest in the disclosure of money raised and spent on

1 | ballot measure campaigns. “[T]he public’s right to know of the financing of political campaigns  
2 | and lobbying and the financial affairs of elected officials and candidates far outweighs any right  
3 | that these matters remain secret and private.” RCW 42.17A.001(10). The people directed that  
4 | these laws be liberally construed “so as to assure continuing public confidence of fairness of  
5 | elections and governmental processes, and so as to assure that the public interest will be fully  
6 | protected.” RCW 42.17A.001. Of the public policies furthered by RCW 42.17A, one stands  
7 | above all others: transparency. RCW 42.17A’s declaration of policy is unequivocal: “That  
8 | political campaign and lobbying contributions and expenditures be fully disclosed to the public  
9 | and that secrecy . . . be avoided.” RCW 42.17A.001(1). To this end, the law “seeks to ferret out  
10 | . . . those whose purpose is to influence the political process . . .” and requires them to publicly  
11 | disclose campaign contributions and expenditures. *State v. (1972) Dan J. Evans Campaign*  
12 | *Comm. (Evans Campaign Comm.)*, 86 Wn.2d 503, 508-09, 546 P.2d 75 (1976).

#### 13 | IV. RELEVANT FACTUAL HISTORY

##### 14 | A. 2002 State Enforcement Action and PDC Staff Guidance to Defendant Eyman

15 | Defendant Eyman’s history of violating Washington’s campaign finance requirements  
16 | for personal gain is undisputed. A State investigation in 2001 and 2002 showed that Defendant  
17 | Eyman used a corporation he established, Permanent Offense, Inc., to conceal up to \$150,000 in  
18 | payments to himself from the campaign funds of Permanent Offense PAC, a political committee  
19 | that Defendant Eyman established to support Initiative 776 in the 2002 general election.  
20 | Declaration of Tony Perkins (Perkins Decl.) ¶ 17. During the State’s investigation, Defendant  
21 | Eyman stated that he established Permanent Offense, Inc. “*to have a way to cover the fact* that  
22 | I was making money sponsoring initiatives, and none of my cosponsors knew that was the case.”  
23 | *Id.* ¶ 18 (emphasis added). The State’s investigation also showed that Defendant Eyman made  
24 | personal use of Permanent Offense PAC funds by making reimbursements to himself directly  
25 | from the campaign account for more than \$10,000 in expenses not related to the I-776 campaign,  
26 | and that Defendant Eyman’s political committee failed to report all contributions and

1 expenditures as required. *Id.* ¶ 17. The State's investigation led to a court action against  
2 Defendant Eyman resulting in \$55,000 in judgments and fees assessed to him and his political  
3 committee. Defendant Eyman was also permanently enjoined from acting as treasurer of any  
4 political committee or as signer on any financial accounts of such a committee. *Id.* ¶ 19.

5       Following the judgment entered against Defendant Eyman, in August 2002, the staff of  
6 the Washington State Public Disclosure Commission (PDC) became aware that Defendant  
7 Eyman solicited personal payments from political supporters to enable his continued work on  
8 initiative campaigns. *Id.* ¶ 20. In these written solicitations, Defendant Eyman promised  
9 anonymity to contributors. He asked that payments be directed to "Tim Eyman, Taxpayer  
10 Advocate," and sent to Defendant Eyman's home address. *Id.* ¶ 21.

11       On August 13, 2002, PDC staff sent a letter to Defendant Eyman, cautioning him that his  
12 written solicitations constituted political committee activity. *Id.* ¶ 22. Staff instructed Defendant  
13 Eyman that if he expected to make such solicitations, he was required to register the "Tim  
14 Eyman, Taxpayer Advocate" political committee and file contribution and expenditure  
15 disclosure reports. *Id.* As an alternative, PDC staff instructed Defendant Eyman that payments  
16 to further his initiative campaign work could be reported as in-kind contributions to his registered  
17 ballot proposition committees. *Id.* The letter reminded Defendant Eyman that he was enjoined  
18 by court order from serving as a political committee treasurer. *Id.* In an interview under oath  
19 with a PDC investigator on July 31, 2003, Defendant Eyman acknowledged PDC staff's 2002  
20 advice, and did not dispute it: "I made an assumption that the Public Disclosure Commission  
21 wasn't purposely trying to sabotage me by giving me bad advice. I assumed they were giving  
22 me good advice." *Id.* ¶ 23.

23       Despite this acknowledgement, and in contravention of the law and PDC staff  
24 instructions, over the nearly two decades that followed, Defendant Eyman continued to solicit  
25 and accept concealed payments and contributions to further his work on initiative campaigns.  
26 *Id.* ¶ 24. He failed to disclose this contribution activity as required by state law. *Id.* As detailed

1 below, despite the judgment against him, Defendant Eyman continued to scheme to make  
2 concealed payments to himself from political committee funds by funneling those payments  
3 through third parties. *Id.*

4 **B. 2010 Concealment and Personal Use Schemes: Initiative 1053**

5 Defendant Eyman's discovery responses in this case include a letter dated May 19, 2010,  
6 to Roy Ruffino, a principal of the signature gathering firm Citizen Solutions, Inc., and a member  
7 of Defendant Citizen Solutions, LLC. Perkins Decl. ¶ 25. In 2010, Citizen Solutions was working  
8 to qualify Defendant Eyman's Initiative 1053 for the ballot. *Id.* ¶ 26. In the May 19, 2010 letter  
9 to Mr. Ruffino, unbeknownst to the rest of his committee, Eyman proposed padding the price  
10 that his own political committee Voters Want More Choices would pay Citizen Solutions per  
11 signature for I-1053: "We have agreed to have Citizen Solutions collect signatures for \$2.00  
12 each. I am doing my best to raise money from the business community at a rate of \$2.50 per  
13 signature. My goal is to have Voters Want More Choices pay Citizen Solutions the agreed upon  
14 \$2 per sig plus \$150,000 so that you have an extra \$150,000 to provide to me." *Id.*<sup>1</sup>

15 On March 12, 2010, Mr. Ruffino sent an email to Defendant Eyman, quoting a price of  
16 **\$2.00** per signature for I-1053. *Id.* ¶ 27. On March 15, 2010 Defendant Eyman forwarded that  
17 email to donors. However, in the forwarded email, Mr. Ruffino's quote was altered to **\$2.50** per  
18 signature, in furtherance of the plan Defendant Eyman described to Mr. Ruffino in the May 19  
19 letter. *Id.* ¶ 28. At his deposition, held on February 5, 2019, Defendant Eyman refused to say  
20 whether he altered Mr. Ruffino's email, invoking his Fifth Amendment protections against self-  
21 incrimination.<sup>2</sup> See *Ikeda v. Curtis*, 43 Wn.2d 449, 458, 261 P.2d 684 (1953) ("When a witness  
22 in a civil suit refuses to answer a question on the ground that his answer might tend to incriminate  
23 him, . . . the trier of facts in a civil case is entitled to draw an inference from his refusal to so  
24

25 <sup>1</sup> Defendant Eyman's partners in Voters Want More Choices, Jack and Mike Fagan, both testified that they  
26 were unaware of Defendant Eyman's surreptitiously having their committee overcharged for his own benefit.  
Perkins Decl. ¶ 47.

<sup>2</sup> Defendant Eyman invoked the Fifth Amendment more than 80 times during his deposition. *Id.* ¶ 29.

1 testify.”). Defendant Eyman similarly refused to answer whether the principals of Citizen  
2 Solutions made payments to him following the I-1053 campaign on the same grounds. *Id.* ¶ 29.

3 **C. 2011 Concealment and Personal Use Schemes: Initiative 1125**

4 In an email sent on May 11, 2011, Defendant Eyman sought information from his  
5 accounting firm concerning the tax requirements connected with financial gifts. Perkins Decl.  
6 ¶ 30. On May 13, 2011, he received a response to his inquiry and forwarded it to Citizen  
7 Solutions, Inc. principal Edward Agazarm. The forwarded email asserted that a single person  
8 could make gifts of \$13,000 to each of Defendant Eyman’s family members without disclosing  
9 those payments to the Internal Revenue Service. *Id.*

10 In the 2011 election, Defendant Eyman’s political committee paid Citizen Solutions, Inc.  
11 \$1,008,000 to gather signatures for Initiative 1125. *Id.* ¶ 31. Following the 2011 campaign,  
12 Citizen Solutions’ principals made \$86,000 in payments to Defendant Eyman, his wife Karen,  
13 and their three minor children. Payments were made through two \$13,000 personal checks from  
14 Roy Ruffino, and the remaining \$60,000 through cashier’s checks purchased by Edward  
15 Agazarm. None of the checks exceeded the IRS gift reporting threshold of \$13,000. *Id.* ¶ 32.

16 Defendant Eyman is currently in contempt of a court order compelling him to answer  
17 written interrogatories concerning these payments. *Id.* ¶ 33. In a deposition held February 5 and  
18 6, 2019, Defendant Eyman refused to answer questions about payments he received from Roy  
19 Ruffino and Edward Agazarm, citing his Fifth Amendment protections against self-  
20 incrimination. *Id.*

21 For her part, Defendant Eyman’s spouse Karen Eyman testified in her deposition on  
22 January 25, 2019, that she was not aware that Roy Ruffino or Edward Agazarm had ever given  
23 her or her children financial gifts.<sup>3</sup> *Id.* ¶ 34. She stated that she did not socialize with Mr. Ruffino  
24 or Edward Agazarm. *Id.* She could not recall ever having a personal conversation with

25 <sup>3</sup> In Washington gifts are separate property. *See In re Marriage of Kile & Kendall*, 186 Wn. App. 864,  
26 876–77, 347 P.3d 894, 900 (2015). If these were actually gifts, which of course they were not, then Defendant  
Eyman took tens of thousands of dollars that belonged to his wife as her separate property without telling her.

1 Mr. Ruffino and was not certain that she had ever met Edward Agazarm. *Id.*

2 **D. 2012/2013 Concealment and Personal Use Schemes: Initiative 1185**

3 From April 11 – July 6, 2012, Defendant Eyman’s political committee and other sponsors  
4 paid Defendant Citizen Solutions LLC \$1,245,475 to gather signatures to qualify I-1185 for the  
5 2012 ballot. Defendant Eyman’s political committee Voters Want More Choices paid \$623,325  
6 of this amount, and other contributors and sponsors paid the remaining \$622,150. Perkins Decl.  
7 ¶ 35. These contributions and expenditures were the result of solicitations by Defendant Eyman.  
8 *Id.* ¶ 35.

9 During the I-1185 signature drive, Edward Agazarm contacted Defendant Eyman on May  
10 15, 2012, and again on June 26, 2012 to discuss an increase in the price of initiative signatures.  
11 *Id.* ¶ 36. The second email from Edward Agazarm referred to “\$270,000 outstanding on the  
12 signature contract” that was hampering Citizen Solutions’ efforts to qualify the initiative.  
13 *Id.* ¶ 37. Defendant Eyman agreed on May 15, 2012 that the price should be raised 50 cents per  
14 signature. *Id.* He agreed to an additional price increase of \$1.50 per signature on June 27, 2012,  
15 in the final days of the campaign. *Id.* ¶ 38.

16 Defendant Eyman’s written interrogatory responses state that Edward Agazarm merely  
17 “suggested” these price increases; the responses fail to identify which agent of Defendant Citizen  
18 Solutions LLC actually sought a price increase because, though formerly a principal of Citizen  
19 Solutions, Inc., Edward Agazarm was not a member of Defendant Citizen Solutions LLC.  
20 *Id.* ¶ 39. Defendant Eyman’s failure to fully answer this interrogatory contributes to his contempt  
21 of the Court’s order compelling his responses. *Id.*

22 Regardless of the justification for an increase in the price paid to Defendant Citizen  
23 Solutions LLC, Defendant Eyman forwarded Edward Agazarm’s May 15, 2012 and June 26,  
24 2012 emails to contributors, soliciting additional funds to gather I-1185 signatures. *Id.* ¶ 40. On  
25 many other occasions, Defendant Eyman contacted contributors to urgently press for additional  
26 funds, warning them that without additional payments to Defendant Citizen Solutions LLC,

1 I-1185 might fail to qualify for the ballot. *Id.*

2 In an email to key fundraisers Greg Hanon and Dan Levine on June 20, 2012, Defendant  
3 Eyman stated,

4 It is abundantly clear that the sigs will be there if the \$\$ are there. To pay for  
5 exactly 300,000 signatures, the signature drive budget is \$1,388,000...I have  
6 recently learned that donations received so far (as of last Friday) total \$1,197,500.  
7 There is roughly \$150,000 in donations not received but waiting to come in (it  
8 was closer to \$200,000 but two \$25,000 pledges fell through). Again, that's the  
9 budget to hit EXACTLY 300,000. But I must quickly add that there must be a  
cushion of \$\$ for signatures ABOVE THE MINIMUM. We've all invested too  
much time and energy and money to be penny-wise but pound-foolish when it  
comes to ensuring enough signatures are turned in to guarantee the initiative  
qualifies for the ballot[.]

10 *Id.* ¶ 41. In the midst of these communications, Defendant Eyman was engaged in a scheme with  
11 Defendant Citizen Solutions LLC and member Defendant William Agazarm to generate a  
12 kickback to Defendant Eyman. *Id.* ¶ 42.

13 On June 5, 2012, Defendant Eyman sent an email to Roy Ruffino and Defendant William  
14 Agazarm, members of Defendant Citizen Solutions LLC, and to Edward Agazarm, offering  
15 various schemes intended to result in hundreds of thousands of dollars in compensation to  
16 Defendant Eyman. *Id.* Although Defendant Eyman preferred an ongoing business partnership in  
17 which he would share 1/3 of Defendant Citizen Solutions LLC's revenue, as an alternative, he  
18 proposed that the company pay him **\$270,000** as a sales commission. Defendant Eyman stated,  
19 "When it comes to the extra \$270k, I'm working hard to get it for myself by having it paid to  
20 Citizen Solutions." *Id.* ¶ 43. This \$270,000, the identical amount that Edward Agazarm would  
21 later state was "outstanding on the contract" for I-1185 signatures, was intended to go to  
22 Defendant Eyman the entire time. *Id.* Defendant Eyman's statements in the June 5, 2012 email  
23 showed his awareness that funds being paid to Defendant Citizen Solutions LLC would not be  
24 used exclusively to fund signature gathering for I-1185, but would be converted to Defendant  
25 Eyman's personal use. *Id.* ¶ 44. In an email to Defendant Eyman sent July 8, 2012, Defendant  
26 William Agazarm stated, "There should be no reason...that should prevent you from getting paid



1 immediately.” *Id.*

2 On May 21, 2018, Defendant Citizen Solutions LLC’s bank produced records to the State  
3 documenting the business’ financial transactions during the I-1185 signature drive. *Id.* ¶ 45.  
4 Those records show that on July 3, 2012, Defendant Citizen Solutions LLC made its last  
5 payments to the petitioning firms whose workers had gathered I-1185 signatures. *Id.* Though all  
6 signatures had already been gathered and paid for, Defendant Citizen Solutions LLC continued  
7 to accept payments after July 3, 2012, receiving a total of \$242,975 from the Washington Wine  
8 and Beer Wholesalers, the Association of Washington Business Political Action Committee, and  
9 Defendant Eyman’s political committee Voters Want More Choices. *Id.* ¶ 46. Defendant  
10 Eyman’s committee alone provided \$170,825, funded through contributions from individuals,  
11 businesses, and other entities. *Id.* ¶ 47. The memo line on Voters Want More Choices’ final  
12 check to Citizen Solutions LLC, signed by committee officer Jack Fagan, showed that the  
13 payment was intended for “signatures.” *Id.* One hundred percent of the funds that I-1185  
14 supporters paid to Defendant Citizen Solutions LLC after July 3, 2012 were returned to  
15 Defendant Eyman in a kickback directed to Defendant Eyman’s business, Defendant Watchdog  
16 for Taxpayers, LLC. *Id.* ¶ 48.

17 Contributors to the I-1185 effort believed their payments were necessary to qualify the  
18 initiative for the ballot. They did not intend their payments for signatures to compensate  
19 Defendant Eyman. They were not aware that Defendant Eyman was directing payments to  
20 Defendant Citizen Solutions so that the company could return the funds to Defendant Eyman.  
21 Had they been aware of Defendants’ scheme to misdirect their funds to Defendants Watchdog  
22 and Eyman, they would not have contributed to support I-1185. *See* Declaration of Gary  
23 Chandler (Chandler Decl.) ¶¶ 7-10, 13; Declaration of Greg Hanon (Hanon Decl.) ¶¶ 11-13, 15-  
24 19, 21-22; Declaration of John Guadnola (Guadnola Decl.) ¶¶ 11-22.

25 On July 8, 2012, Defendant Eyman participated in an email exchange with Defendant  
26 William Agazarm and Edward Agazarm. Perkins Decl. ¶ 49. The topic of the exchange was

1 Defendant Eyman's efforts to obtain a payment from Defendant Citizen Solutions LLC. *Id.*  
2 Defendant William Agazarm assured Defendant Eyman that payment was forthcoming, and in  
3 doing so alluded to a history of payments from Citizen Solutions Inc. to Defendant Eyman: "My  
4 first and foremost goal is *to ensure that you get paid what is properly owed* this year and to  
5 make it happen promptly." *Id.* ¶ 50 (emphasis added). Defendant William Agazarm indicated  
6 that Roy Ruffino, the company's other member, was not aware of the purpose of the payments:  
7 "While you are trying to avoid telling Roy exactly what the funds are for, you could always tell  
8 him you are working on 'something' with Paul Jacobs (sic) and hoping to grow some national  
9 recognition from it." *Id.* In a reply, Defendant Eyman made clear that the true purpose of the  
10 funds was to fund an initiative signature drive through payments to Paul Jacob; he wrote:

11 [P]romised Paul a payment early this week so eager to follow through on that and  
12 get the ball rolling (you said some petitioners want to do it on speculation but  
13 better to get them locked in early). talked to Brian today and he'll have petitions  
14 printed tomorrow (Monday). strike while the iron's hot.

15 *Id.* ¶ 51. On July 11, 2012, Defendant Citizen Solutions LLC made a wire transfer of \$308,185  
16 to Defendant Watchdog. *Id.* ¶ 52. When asked about the \$308,185 payment at his deposition,  
17 Mr. Ruffino pled the Fifth. *Id.* ¶ 53. So did Defendant Eyman. *Id.* ¶ 54.

18 **E. 2012/2013 Concealment and Personal Use Schemes: Initiative 517**

19 As detailed above, Defendant Eyman disclosed to Defendant William Agazarm that the  
20 true purpose of the payment he sought from Defendant Citizen Solutions LLC was to fund an  
21 initiative signature drive through payments to Paul Jacob. That initiative was I-517. Perkins  
22 Decl. ¶ 55. Defendant Eyman similarly disclosed this plan to Jack Fagan and Mike Fagan, his  
23 fellow officers in the Voters Want More Choices political committee. *Id.* ¶ 56. However, in that  
24 instance he concealed the fact that the funds used to support I-517 came from a kickback he  
25 received from Defendant Citizen Solutions LLC funded by overcharges to Voters Want More  
26 Choices to qualify I-1185 for the ballot.

In a July 14, 2012 email to Jack Fagan and Mike Fagan, Defendant Eyman stated, "Here's

1 | what I'd like to do—me personally loan my own money to Paul Jacob's group Citizens in Charge  
2 | to get I-517 on the ballot (roughly \$160,000). It's enough to guarantee that I-517 gets enough  
3 | sigs by December 31." *Id.* ¶ 57. Defendant Eyman then proposed a plan through which he would  
4 | be reimbursed for his payments for I-517 signatures, including through contributions made to  
5 | Voters Want More Choices. *Id.* The funds were not Defendant Eyman's "own money," as he  
6 | described, but instead were funds that I-1185 supporters paid to Defendant Citizen Solutions  
7 | LLC to qualify that initiative for the 2012 ballot. *Id.* ¶ 58. As of the date of his July 14, 2012  
8 | email, Defendant Watchdog had already made payments totaling \$100,000 to Citizens in Charge  
9 | to fund the I-517 signature drive. *Id.* ¶ 59. Before the end of October 2012, he would make  
10 | another \$100,000 in concealed payments to Citizens in Charge to support I-517. *Id.* None of  
11 | these payments were disclosed to the PDC. *Id.* ¶ 60. In separate depositions, Jack and Mike  
12 | Fagan stated that they were previously unaware that Defendant Eyman had carried through with  
13 | his plan to send funds to Citizens in Charge for I-517 signatures, since they believed they had  
14 | made clear to Defendant Eyman that he could not be repaid from contributions to Voters Want  
15 | More Choices. *Id.*

16 | Defendant Eyman also encouraged others to make concealed contributions to support  
17 | I-517. In a June 13, 2013 email to Mark Baerwaldt, Defendant Eyman solicited tens of thousands  
18 | of dollars for radio advertisements to support the initiative, stating: "I've never asked you to  
19 | donate before, but I'm asking you to donate to this one...And just like I did you can donate  
20 | anonymously through Citizens in Charge." *Id.* ¶ 61. The same week, Defendant Eyman  
21 | collaborated with Paul Jacob on a fundraising letter dated June 19, 2013, in which they told  
22 | prospective contributors "your financial support today makes all the difference in seizing this  
23 | opportunity to take Initiative 517 over the finish line in Washington state. I respectfully request  
24 | a tax-deductible contribution of \$10,000 to Citizens in Charge Foundation." *Id.* ¶ 62. Despite  
25 | this promise, contributions earmarked for electoral political activity such as ballot proposition  
26 | support are not tax-deductible. Such contributions are also required to be disclosed under

1 Washington law; however, neither Citizens in Charge nor Defendant Eyman nor the I-517  
2 committee made any such disclosures. *Id.* ¶ 63.

3 Defendant Eyman had previously expressed interest to Paul Jacob concerning concealed  
4 initiative contributions made through an agent. In a December 21, 2011 email to Jacob,  
5 Defendant Eyman asked, “who can I contact at Americans for Tax Reform about ‘pass through’  
6 donations from ATR to our initiatives in WA state?” *Id.* ¶ 64.

7 As of the date of each of these communications, Defendant Eyman was aware that  
8 Washington law prohibits the making of contributions through an agent in a manner to effect  
9 concealment. On October 19, 2010, Defendant Eyman received and acknowledged written  
10 guidance from Public Disclosure Commission staff concerning the concealment prohibition. In  
11 an email sent that day, PDC staff informed Defendant Eyman that “no committee may conceal  
12 the *known* source of a contribution.” Staff then quoted the concealment statute to Defendant  
13 Eyman. *Id.* ¶ 65.

14 **F. 2012 Concealment and Personal Use Schemes: Letters to Roy Ruffino**

15 As discussed above, at the close of the 2011 campaign for I-1125, Citizen Solutions Inc.  
16 principals Roy Ruffino and Edward Agazarm made \$86,000 in payments to Defendant Eyman,  
17 his spouse, and their three minor children. Perkins Decl. ¶ 66. In a letter dated August 3, 2012,  
18 addressed to Roy Ruffino, Defendant Eyman referred to additional payments he had received  
19 from Edward Agazarm: \$130,000 in total payments he termed “gifts” for 2010 and 2011. *Id.*  
20 Defendant Eyman’s August 3, 2012 letter to Roy Ruffino indicates that the additional payments  
21 he expected from Roy Ruffino were not optional: “[T]his letter...concerns resolving the 2010  
22 and 2011 stuff. Eddie provided \$130,000 as a financial gift for those two years—you said you’d  
23 do the same...I’d like us to agree on the amount still outstanding and for you to let me know  
24 your gift payment plan...You need to come up with one.” *Id.* ¶ 67.

25 On December 13, 2012, Defendant Eyman sent another letter to Mr. Ruffino, pressuring  
26 him to provide tens of thousands of dollars in payments to Eyman that year and the next. The

1 letter referred to other payments that Ruffino had already made: "You generously gave me \$9900  
2 on September 22nd (and a nice bottle of champagne!!) so that leaves \$35,100 for the rest of 2012  
3 and still \$39,000 for 2013... Roy, I ask that you please schedule a few more lunches from now  
4 until December 31st so you can "max gift" by the end of the year... You're making great progress  
5 on this and I continue to be extremely grateful for your continued help on it." *Id.* ¶ 68.

6 Based on Defendant Eyman's banking records produced through discovery, it appears  
7 the \$9,900 deposit in September 2012 was made in cash. *Id.* ¶ 69. Despite the communications  
8 and other records documenting payments he received from the Citizens Solutions players,  
9 Defendant Eyman remains in contempt of a court order compelling him to answer questions  
10 about these payments through written discovery. *Id.* ¶ 70. When asked about the payments at his  
11 deposition, Defendant Eyman pled the Fifth. *Id.*

12 **G. 2013 Concealment and Personal Use Scheme: City of Vancouver Ballot Proposition**

13 Documents produced in discovery indicate that in 2013, Defendant Eyman spearheaded  
14 an effort to challenge the City of Vancouver's decision not to place a measure concerning light  
15 rail funding on the local ballot. Perkins Decl. ¶ 71. In a February 3, 2013 email to initiative  
16 activist Debbie Peterson, Defendant Eyman provided language for Peterson to use in soliciting  
17 funds for the legal challenge, including a budget of \$20,000 for legal services. *Id.* In this email  
18 and in several others sent the same month, Defendant Eyman falsely stated that monetary and  
19 in-kind contributions related to a pre-election legal challenge on a ballot proposition are not  
20 reportable political contributions, and may be made anonymously. *Id.* ¶ 72. Regardless of  
21 whether this assurance of anonymity was correct, Defendant Eyman continued to press  
22 fundraising for the legal challenge as the number one priority. *Id.*

23 Defendant Eyman's banking records show that in 2013, Defendant Eyman received  
24 \$14,982 in payments from Stephen Pidgeon, the attorney retained to work on the legal challenge.  
25 *Id.* ¶ 73. This amount represents nearly ¾ of the amount that Defendant Eyman publicized as the  
26 legal services budget for the Vancouver ballot proposition effort. *Id.*

1 In his written answers to discovery, Defendant Eyman acknowledges receiving payments  
2 from attorney Stephen Pidgeon, a vendor to a political committee. *Id.* ¶ 74. Defendant Eyman  
3 describes these payments as compensation for services Defendant Eyman performed for  
4 Pidgeon—specifically, “securing plaintiffs” and “fundraising.” *Id.* As in the 2012 campaign for  
5 I-1185, in 2013 Defendant Eyman raised funds for a ballot proposition committee to pay its  
6 vendor, with the understanding that that vendor would remit a significant payment back to  
7 Defendant Eyman for his personal use. *Id.*

8 **H. 2013 – 2018 Additional Concealed Payments for Political Work**

9 From 2013 - 2018 Defendant Eyman continued to solicit and accept concealed payments  
10 from hundreds if not thousands of sources. Perkins Decl. ¶ 75. The payments were cast as  
11 compensation to Defendant Eyman for his work on initiative campaigns, tax-deductible  
12 donations to Citizens in Charge earmarked for the benefit of Defendant Eyman and his family,  
13 and even as fraudulent charges for consulting work that Defendant Eyman did not perform. *Id.*  
14 ¶ 76. In a fundraising solicitation to Terrence “Lee” Zehrer dated March 10, 2014, Defendant  
15 Eyman stated,

16 I’m scrambling because my compensation disbursement for the year was \$37,000  
17 in January (ugh!)...I was recently talking with an ally of mine who heads up a  
18 501c3 Foundation (their mission is protecting the initiative process in the states  
19 that have it). Donations to his group are tax deductible and he said he’d provide  
a dollar-for-dollar payment to me personally for any money received (up to a  
maximum of \$50K). I thought of you immediately.

20 *Id.* ¶ 77.

21 In an April 7, 2014 letter to Clyde Holland, Defendant Eyman detailed his successes in  
22 passing ballot initiatives, and discussed the sources of compensation for his political work  
23 throughout several years. *Id.* ¶ 78. He solicited Holland for compensation: “The only reason  
24 we’ve been successful over the years is because of the support of successful benefactors. I ask  
25 that you please help today so I can continue.” *Id.* In response, Holland approved a \$1,000  
26 payment to Defendant Eyman “towards your compensation.” *Id.* Defendant Eyman then

1 succeeded in pressuring Holland to increase this payment to \$5,000. *Id.* On May 23, 2014,  
2 Holland's staff directed a \$5,000 check to Defendant Eyman's home address, at the instruction  
3 of Defendant Eyman. *Id.*

4 In an August 10, 2014 solicitation emailed to dozens of supporters, Defendant Eyman  
5 touted his latest project, an initiative to the Legislature that would require a uniform statewide  
6 minimum wage. *Id.* ¶ 79. He coupled this information with a pitch for personal compensation:  
7 "I'm NOT asking you to donate to this effort. I'm sending you this to show you that as long as  
8 you continue to support me and my family, I will be able to take on these important  
9 battles...Thank you for being a benefactor to me and my family. I really appreciate it." *Id.*

10 In a March 9, 2015 solicitation to Suzie Burke, Eyman requested a contribution to the  
11 initiative he was then supporting, and went on to say:

12 In addition, and for the rest of the year, I'd ask that every time you're inspired to  
13 give more money to this effort, that you send a tax deductible donation to Citizens  
14 in Charge Foundation (see enclosed form). Last year, you donated \$5,000 to them  
15 (all tax deductible) – I hope you can do that or more this year. And just like last  
16 year, the same amount you donate to their Foundation will eventually go to  
17 helping me and my family.

18 *Id.* ¶ 80.

19 In a fundraising email sent to Kemper Freeman on September 22, 2016, Defendant  
20 Eyman described three options for contributing:

21 Last December, when my wife was in the hospital, you called me and said you'd  
22 be good with another '10 for Tim'. I have left messages since then asking for that  
23 '10 for Tim' for last year (for qualifying and passing 1-1366) and another \$10K  
24 for this year's efforts (for stopping tax increases during session and working hard  
25 to stop ST3 and its tax increases).

26 *Id.* ¶ 81. In a deposition held on February 6, 2019, Defendant Eyman refused to answer questions  
about funds he received through his "10 for Tim" solicitation program, citing Fifth Amendment  
protection against self-incrimination. *Id.* ¶ 82.

The September 22, 2016 solicitation to Kemper Freeman went on to state,

You've said that your accounting department is having problems processing  
this...Here are 3 alternatives to provide help for me and my family: 1) Provide a

1 financial gift for me and my family (like you did in 2014). Make check payable  
2 to 'Tim Eyman' and mail it to me...2) Provide a tax deductible donation to  
3 Citizens in Charge Foundation. Form is attached. 3) Provide a payment to me for  
consulting, allowing it to be recorded it as a deductible business expense. Invoice  
is attached.

4 *Id.* ¶ 83. There is no discussion of services that Defendants Eyman or Watchdog would perform  
5 for Freeman in exchange for this payment. *Id.*

6 From August of 2013 through October 2018, Defendant Eyman received \$110,500 in  
7 payments from Citizens in Charge. *Id.* ¶ 84. Despite the fact that he steered the sources of those  
8 funds to Citizens in Charge, Defendant Eyman failed to disclose their payments as contributions  
9 connected to the I-517 campaign. *Id.* ¶ 85. Defendant Eyman's "loan" to Citizens in Charge to  
10 sponsor I-517 signatures originally totaled \$200,000; despite seeking protection from creditors  
11 in bankruptcy court, Defendant Eyman stated to the court that he did not intend to collect the  
12 nearly \$90,000 remaining on the loan. *Id.* ¶ 86. He cited the State's lawsuit as a pretext to write  
13 the debt off, putting the outstanding \$90,000 out of reach of his creditors. *Id.*

14 From July 2012 through June 2017, Defendant Eyman deposited at least \$575,822 in  
15 donations into his personal accounts from supporters who agreed to compensate him for his work  
16 sponsoring initiatives. *Id.* ¶ 87. These payments included checks with notations indicating  
17 payment for Defendant Eyman's work on specific initiative campaigns, including 2014 Initiative  
18 1325, 2015 Initiative 1366, and I-869, Defendant Eyman's 2016 initiative to the Legislature  
19 concerning transportation funding. *Id.* ¶ 88. Defendant Eyman acknowledged in bankruptcy  
20 court filings that he continues to receive personal payments from supporters to this day. *Id.* ¶ 89.

21 Although Defendant Eyman accepted PDC staff's guidance in 2002 that payments to  
22 support his initiative campaign work are reportable political committee contributions, he failed  
23 to disclose these payments as contributions to any of his initiative committees, or to Help Us  
24 Help Taxpayers, the committee that Defendant Eyman established and registered to disclose  
25 compensation to him and his fellow initiative committee officers. *Id.* ¶ 90.

26 Finally, Defendant Eyman even benefits personally from contributions that are



1 undisputedly subject to the reporting requirements and restrictions of Washington's campaign  
2 finance laws. At least four checks Defendant Eyman received in 2014 *were made payable to his*  
3 *"2/3 Constitutional Amendment" initiative committee*, rather than to Defendant Eyman  
4 personally. Nevertheless, Defendant Eyman deposited these payments into his personal account.  
5 *Id.* ¶ 91.

6 Defendant Eyman continues to seek compensation specifically for his political work. On  
7 PermanentOffense.com, the website that Defendant Eyman's political committee uses to  
8 promote its initiatives and solicit reportable political contributions, he features pleas for personal  
9 financial support of Defendant Eyman and donations to fund his legal defense:

10 The challenges before me – *the costs to continue fighting together to protect the*  
11 *taxpayers*, raising enough so the \$500K that Karen and I loaned to the \$30 Tabs  
12 Initiative is repaid, fighting the government's litigation against me during  
13 bankruptcy, providing for my family after the divorce, earning a living – are much  
14 too great to handle on my own. I hope you'll help me and support me in the years  
15 to come.

16 *Id.* ¶ 92. The website highlights Defendant Eyman's resistance to the State's litigation, finishing  
17 with another solicitation: "If not for the love and support of all of you, I wouldn't be able to keep  
18 getting back up again and again and again..." *Id.* ¶ 93.

## 19 V. RELEVANT PROCEDURAL HISTORY

20 The State filed this enforcement action against the Defendants on March 31, 2017. *See*  
21 Complaint. Based on the serious nature of the allegations made against Defendant Eyman and  
22 his long history of flouting campaign finance laws that already resulted in his being permanently  
23 barred from acting as a treasurer, the State included an injunctive relief request tailored to prevent  
24 Defendant Eyman from continuing this pattern of diverting contributions for his personal use.  
25 This request was "[f]or temporary and permanent injunctive relief, as authorized by  
26 RCW 42.17A.750(1)(h), including but not limited to *barring Defendant Eyman from managing,*  
*controlling, negotiating, or directing financial transactions of any kind for any political*  
*committee in the future.*" Compl. at 11 (¶¶ 6.1 - 6.4) (emphasis added). In his motion, Defendant

1 Eyman seeks an advisory opinion that this particular recitation for injunctive relief would be  
2 unconstitutional in the event it is sought and imposed by the Court. It would not be.

### 3 VI. ARGUMENT

4 Summary judgment is only proper where (1) there is no genuine issue of material fact,  
5 (2) reasonable persons could reach but one conclusion, and (3) the moving party is entitled to  
6 judgment as a matter of law. *Ellis v. City of Seattle*, 142 Wn.2d 450, 458, 13 P.3d 1065 (2000);  
7 CR 56(c). The moving party bears the initial burden of demonstrating the absence of a genuine  
8 issue of fact, and all facts and reasonable inferences must be construed in favor of the nonmoving  
9 party. *Celotex Corp. v. Catrett*, 477 U.S. 317, 322-23, 106 S. Ct. 2548, 91 L. Ed. 2d 265 (1986).

10 For the reasons set forth below, Defendant Eyman falls well short of satisfying his  
11 burden. As explained more thoroughly below, his motion should be denied because (1) this Court  
12 has the statutory authority to issue an injunction as described in the Complaint; (2) Defendant  
13 Eyman does not have a First Amendment right to control the finances of a political committee;  
14 (3) even if he did have a First Amendment right, it can be limited by this Court to prevent  
15 unlawful conduct; and (4) Defendant Eyman's motion is premature and improperly requests an  
16 advisory opinion on an injunction that has yet to be requested.

#### 17 A. This Court Has Statutory Authority To Issue an Appropriate Injunction

18 The State seeks an injunction against Defendant Eyman under the FCPA, which provides,  
19 "The court may enjoin any person to prevent the doing of any act herein prohibited, or to compel  
20 the performance of any act required herein." RCW 42.17A.750(1)(i). The language of the Act  
21 must be "liberally construed to promote complete disclosure of all information respecting the  
22 financing of political campaigns . . . ." RCW 42.17A.001. Defendant Eyman argues that the  
23 injunctive relief authorized by the Act is limited to the "imposition of an injunction mandating  
24 performance of FCPA obligations." Eyman Br. at 9. His argument is inconsistent with the  
25 language of the statute and would render the statutory language meaningless.

26 Essentially, Defendant Eyman asks this Court to find that the only injunction this Court

1 can issue is one banning the specific conduct that is illegal by statute, which of course is already  
2 illegal. Defendant's argument is that the legislature included this remedy for the sole purpose of  
3 allowing courts to tell offenders to stop violating the law. However, the injunctive relief  
4 described in the statute is designed to eliminate the *opportunity* to violate the statute, by stating  
5 that, "The court may enjoin any person *to prevent* the doing of any act herein prohibited . . . ."  
6 RCW 42.17A.750(1)(i). It does not state, "The Court may enjoin any person *from* the doing of  
7 any act herein prohibited."

8 Courts that have issued injunctions under similarly worded statutes have issued broader  
9 injunctions than simply requiring compliance with the law. For instance, the Commodity Futures  
10 Trading Commission obtained an even broader injunction against a defendant based on statutory  
11 language similar to the language of the statute here. The Commodity Exchange Act allows courts  
12 to enter an injunction "to enforce compliance with this chapter, or any rule, regulation or order  
13 thereunder." 7 U.S.C.A. § 13a-1. Based on that language, the District Court *permanently*  
14 enjoined a defendant who committed fraudulent conduct related to commodities futures from  
15 performing any of a long list of financial transactions, including "entering into any transactions  
16 involving commodity futures." *Commodity Futures Trading Comm'n v. Cloud*, No. CIV.A. H-  
17 10-706, 2011 WL 1157530, at \*10-11 (S.D. Tex. Mar. 24, 2011).

18 It is common for Courts to grant injunctions or otherwise limit the roles of defendants  
19 after finding that they cannot be trusted to perform those roles without violating the law. *See*,  
20 *e.g.*, *Hardee v. State, Dep't of Soc. & Health Servs.*, 172 Wn.2d 1, 3, 256 P.3d 339, 341 (2011)  
21 (affirming Department of Early Learning's revocation of [defendant's] license to operate her  
22 home child care business); *United States v. Hackney*, No. 3:00CR00204 EBB, 2007 WL 915798,  
23 at \*1 (D. Conn. Mar. 23, 2007) ("[Defendant] was ultimately barred from trading securities and  
24 from association with any broker dealer, investment advisor or securities dealer.").

25 This Court has the authority to issue an injunction necessary to ensure Defendant  
26 Eyman's compliance with RCW 42.17A. The scope of that injunction will be decided at a later

1 date, when the full extent of Defendant Eyman's malfeasance is clear, but the Court certainly  
2 has authority to enter an injunction beyond simply requiring Eyman to comply with the statute.

3 **B. The Injunction Sought by the State Does Not Implicate a First Amendment Right**

4 To challenge this Court's authority on constitutional grounds, it is Defendant Eyman's  
5 burden to show that the conduct in question is constitutionally protected. *See Mt. Healthy City*  
6 *Sch. Dist. Bd. of Educ. v. Doyle*, 429 U.S. 274, 287, 97 S. Ct. 568, 576, 50 L. Ed. 2d 471 (1977).  
7 Despite his burden, Defendant Eyman does not cite a single authority stating that *managing*  
8 financial transactions is constitutionally protected speech. Instead, Defendant Eyman repeatedly  
9 misstates the remedy sought by the State in an attempt to mislead the Court into believing that  
10 his speech rights are implicated.

11 A few examples of Defendant Eyman's misstating the relief sought include: "a ban, for  
12 life, on all manner of *permissible* conduct..." (Eyman Br. at 10); "...the State's proposed  
13 remedy barring Mr. Eyman from permissible conduct of engaging with *any* political committee,  
14 for the rest of his life..." (*Id.* at 12); "prevent...participation in political action committees" (*Id.*  
15 at 13); "prior restraint on *any* meaningful participation in initiative campaigns" (*Id.*); "restrict  
16 individuals' ability to join together and speak..." (*Id.*); "The Lifetime Ban...prohibits him from  
17 joining with others for the purposes of associating and speaking." (*Id.* at 15). All of these  
18 statements are pure propaganda intended to mislead the Court.

19 The injunctive relief the State will seek at the end of this case will not "prohibit him from  
20 joining with others for the purposes of associating and speaking." The scope of the injunction  
21 will be aimed at preventing him from "managing, controlling, negotiating, or directing financial  
22 transactions." He agreed years ago that the Court had that power when he agreed to a judgment  
23 barring him from acting as a treasurer or as signer on any PAC's financial accounts. *See*  
24 *Judgment Against Tim Eyman (State v. Permanent Offense)*. He was literally banned from  
25 having access to the committee checkbook because he could not be trusted with it. However, as  
26 the evidence overwhelmingly reveals, Defendant Eyman has circumvented that bar by operating

1 illegally outside of the political committee structure and keeping information from the named  
2 treasurer and officers. Now the State will merely be asking the Court to enter an injunction with  
3 terms sufficient to prevent the Defendant Eyman from having the opportunity to continue his  
4 deceit and concealment in violation of campaign finance laws.

5 Defendant Eyman has provided no authority that suggests that he has a constitutional  
6 right to personally manage the financial transactions of a political committee under the First  
7 Amendment. The operations of a political committee are regulated under the FCPA to ensure  
8 transparency to the public. Eyman agrees, conceding, "The FCPA certainly regulates the conduct  
9 of people who do choose to manage, control, negotiate, or direct financial transactions for  
10 political committees." Eyman Br. at 10. There can be no dispute that this regulation is  
11 constitutional. "Washington's disclosure laws are constitutional *on their face* because they serve  
12 an important government interest and use a narrowly tailored means that does not force  
13 overburdensome or duplicative reporting." *Utter v. Bldg. Indus. Ass'n of Washington*, 182 Wn.2d  
14 398, 434, 341 P.3d 953 (2015) (quoting *Human Life of Washington Inc. v. Brumsickle*, 624 F.3d  
15 990, 1013 (9th Cir. 2010). Defendant Eyman does not have a constitutional right to manage the  
16 finances of a PAC, so his motion should be denied.

17 **C. Even if Eyman Did Have a First Amendment Right To Manage Financial**  
18 **Transactions, It Can Be Limited by the Court to Prevent Unlawful Conduct**

19 "[T]he First Amendment does not guarantee the right to communicate one's views at all  
20 times and places or in any manner that may be desired." *Bering v. SHARE*, 106 Wn.2d 212, 222,  
21 721 P.2d 918 (1986) (quoting *Heffron v. Int'l Soc'y for Krishna Consciousness, Inc.*, 452 U.S.  
22 640, 647, 101 S. Ct. 2559, 69 L. Ed. 2d 298 (1981)). "The Supreme Court has regularly rejected  
23 the assertion that people who wish to propagandize protests or views have a constitutional right  
24 to do so whenever and however and wherever they please." *Id.* at 226 (citations and internal  
25 quotations omitted.).

26 A court considering a challenge to a state election law must weigh "the character and

1 magnitude of the asserted injury to the rights protected by the First and Fourteenth Amendments”  
2 against “ ‘the precise interests put forward by the State as justifications for the burden imposed  
3 by its rule,’ taking into consideration ‘the extent to which those interests make it necessary to  
4 burden the plaintiff’s rights.’ ” *Burdick v. Takushi*, 504 U.S. 428, 434, 112 S. Ct. 2059, 2063,  
5 119 L. Ed. 2d 245 (1992) (quoting *Anderson v. Celebrezze*, 460 U.S. 780, 789, 103 S. Ct. 1564,  
6 1570, 75 L. Ed. 2d 547 (1983)).

7 As described above, Defendant Eyman has failed to establish a First Amendment right  
8 to manage financial transactions for a PAC. However, even if he did establish such a right, an  
9 injunction limiting his opportunity to violate the FCPA in the future would pass constitutional  
10 scrutiny. When a state election law imposes only reasonable, nondiscriminatory restrictions upon  
11 First Amendment rights, important state regulatory interests “are generally sufficient to justify  
12 the restrictions.” *Id.*; *Anderson*, 460 U.S. at 788.

13 **1. A restriction on Defendant Eyman’s handling of financial transactions is**  
14 **non-discriminatory as to content.**

15 “In determining whether a restriction is content-neutral or content-based, the Supreme  
16 Court has held that government regulation of expressive activity is content neutral so long as it  
17 is justified without reference to the content of the regulated speech.” *Collier v. City of Tacoma*,  
18 121 Wn.2d 737, 749, 854 P.2d 1046 (1993) (quoting *Ward v. Rock Against Racism*, 491 U.S. at  
19 791, 109 S. Ct. at 2753) (internal quotations omitted). As described above, handling financial  
20 transactions is not protected speech, but even if it were, the limitation on Defendant Eyman’s  
21 handling of financial transactions is content neutral. The injunction would bar him from handling  
22 financial transactions for any political committee, regardless of its message.

23 **2. The State has an important regulatory interest in ensuring Eyman does not**  
24 **violate campaign finance laws.**

25 Both federal and state courts have recognized the importance of the State interest in  
26 ensuring transparency and propriety in campaign finance activity. The Ninth Circuit rejected a  
constitutional challenge to Washington’s campaign finance law, finding that the State’s

1 disclosure requirements advanced an “important and well-recognized governmental interest.”  
2 *Human Life of Washington, Inc. v. Brumsickle*, 624 F.3d at 1008. Likewise, in *Permanent*  
3 *Offense*, 136 Wn. App. at 281-86, the case where Defendant Eyman previously funneled  
4 campaign contributions to himself and failed to disclose those payments, the Washington  
5 appellate court also rejected a constitutional challenge to the State’s campaign finance laws,  
6 finding that “the State has a substantial interest in providing the electorate with valuable  
7 information about who is promoting ballot measures and why they are doing so.” *Id.* at 284.

8 There is no dispute that the State has an important regulatory interest in limiting Eyman’s  
9 ability to continue his scheme to violate campaign finance laws. The only question for the Court  
10 is whether the State’s proposed restrictions are *reasonable*. *Burdick v. Takushi*, 504 U.S. at 434.

11 **3. A limit on Eyman’s handling financial transactions for a PAC is reasonable.**

12 There is no “ ‘litmus-paper test for separating those restrictions that are valid from those  
13 that are invidious[.]’ ” *Clements v. Fashing*, 457 U.S. 957, 963 (1982) (quoting *Storer*, 415 U.S.  
14 at 730). On summary judgment, this Court must presume all of the myriad violations of campaign  
15 finance laws listed above in the Statement of Facts to be true. Those facts demonstrate Eyman’s  
16 absolute refusal to comply with the law, and they are just the tip of the iceberg. This Court has  
17 the authority to place reasonable limitations on his conduct and that is what the State will ask.

18 Defendant Eyman asks this Court to preemptively rule that an injunction is not  
19 appropriate in this case, but the content of the proposed injunction is not before the Court, and  
20 the behavior that necessitates it has not been fully presented. Decisions in this area of  
21 constitutional adjudication is a matter of degree, and *involves a consideration of the facts and*  
22 *circumstances behind the State’s action*, the interests the State seeks to protect by placing  
23 restrictions on the party subjected to the restrictions, and the nature of the interests of those who  
24 may be burdened by the restrictions. *Id.* (citing *Williams*, 393 U.S. at 30) (emphasis added).

25 The facts stated above, seen in a light most favorable to the State demonstrate that  
26 Defendant Eyman’s illegal behavior must be stopped with reasonable limitations on his financial

1 | dealings on behalf of political committees. This Court cannot make a reasonableness  
2 | determination without the full facts and the language of the proposed injunction. This Court must  
3 | wait for the facts and circumstances at trial before rendering its decision.

4 | **D. Defendant Eyman's Motion Should Be Denied Because It Improperly Seeks an**  
5 | **Advisory Opinion on a Potential Remedy That Is Not Yet Before the Court**

6 | Defendant Eyman's motion should be denied because it seeks an improper advisory  
7 | opinion on whether a potential remedy that has not yet been presented to this Court would violate  
8 | the Constitution without the benefit of the full vetting of the facts in this case. "The duration and  
9 | scope of an injunction *are decided on the facts of each case* at the trial court's discretion." *King*  
10 | *v. Riveland*, 125 Wn.2d 500, 515, 886 P.2d 160 (1994) (citations omitted) (emphasis added).  
11 | Because the actual terms of any injunction and the extent of Defendant Eyman's illegal conduct  
12 | is presently unknown to the Court, there is no justiciable controversy at this time and the  
13 | requested declaration constitutes an impermissible advisory opinion. *See, e.g., Walker v. Monroe*,  
14 | 124 Wn.2d 402, 418, 879 P.2d 929 (1994).

15 | *Walker* is particularly instructive in this regard. There, the Washington Supreme Court  
16 | dismissed as seeking an improper advisory opinion a declaratory judgment action challenging  
17 | the constitutionality of certain provisions of a voter-approved initiative that had not yet come  
18 | into effect. *Walker*, 124 Wn.2d at 418 ("We choose instead to adhere to the long-standing rule  
19 | that this court is not authorized under the declaratory judgments act to render advisory opinions  
20 | or pronouncements upon abstract or speculative questions."). This deficiency is even more  
21 | pronounced here because not only has an injunction not yet been imposed, but the specific terms  
22 | of any future injunction that this Court may consider are currently unknown, as are the facts that  
23 | might lead to an injunction.

24 | To date, the State has not sought and this Court has not considered a request for injunctive  
25 | relief. When and if the State presents a request for injunctive relief to this Court, its scope will  
26 | be shaped by the facts of the case. The only certainty is that at this time no constitutional rights



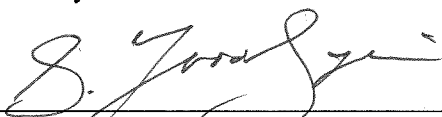
1 have been implicated. The proper time to raise objections to the State's request for injunctive  
2 relief is when such a request is presented to this Court for a ruling.

3 **VII. CONCLUSION**

4 Defendant Eyman's motion for partial summary judgment should be denied because the  
5 injunction recited in the State's Complaint is authorized by statute and Defendant Eyman's  
6 constitutional claims are predicated solely on mischaracterizing the terms of that injunction.

7 DATED this 22nd day of March, 2019.

8 ROBERT W. FERGUSON  
9 Attorney General

10   
11 ERIC S. NEWMAN, WSBA No. 31521  
12 Chief Litigation Counsel, Antitrust Division  
13 S. TODD SIPE, WSBA No. 23203  
14 PAUL M. CRISALLI, WSBA No. 40681  
15 Assistant Attorney General  
16 Attorneys for Plaintiff State of Washington  
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JESSICA BUSWELL, Legal Assistant